Court No. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 832 of 2001(Defective)
(Old No. 67/1999)(Defective)

Smt. Sushila Devi

& 4 others … **Appellant.**

Versus

Shaukin Singh and others … **Respondents.**

Mr. Pankaj Purohit, learned counsel for the appellants.
Mr. R.B.Agarwal, learned counsel for the respondents.

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Date August 03, 2004.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and Award dated 6-11-1998 passed in Motor Accident Claim Case No. 119 of 1995 by Sri R.K. Rastogi, the then District Judge/Motor Accident Claims Tribunal, Chamoli, (***in short the Tribunal),*** whereby the learned Tribunal has allowed the claim petition and awarded Rs. 50,000/- in favour of the claimants/appellants as against Opposite Party Nos. 1 to 3/Respondent Nos. 1 to 3 along with 12% interest per annum. However, the petition was dismissed against the New India Assurance Company, O.P.No.4 (respondent no.4).

Brief facts, giving rise to the present appeal, are that on 5.6.1995 Shiv Prasad, father of claimant nos. 2 to 5 and husband of claimant no.1 was traveling by Bus No. USY-3268 belonging to Opposite Party No.1 and 2 (respondent nos. 1 and 2) and driven by O.P.No. 3/respondent no. 3, from Pokhari to Karnprayag. The bus was over crowded and the conductor of the said bus insisted him to ride on the roof of the bus. As soon as the bus went ahead few kilometers from Pokhari, the driver, in order to drop passengers at

place Devarkhal, applied the brakes heavily, with the result Shiv Prasad fell down from the roof of the bus and sustained grievous injuries. He became unconscious at the spot and was brought to Pokhari Hospital, where the Medical Officer Incharge declared him dead. It is alleged that at the time of incident, the deceased was aged 41 years and was posted on the post of Beldar in the office of Executive Engineer, Construction Division, Pokhari and drawing Rs. 2218.00 per month. The deceased used to spent Rs. 1500/- per month on his family. It is also alleged that had the accident not occurred, the deceased would have served the Department for 17 years more and he would have spared amount of Rs. 3,50,000/- to meet the expenses of his family. It is also alleged that the claimants have suffered loss of consortium, love and affection, etc. due to death of Shiv Prasad. The claimants have, therefore, filed the petition for compensation worth Rs.4,55,000/- for the death of Shiv Prasad.

The owners of the bus, O.P. Nos 1 and 2 contested the petition by filing joint written statement. They have admitted the fact that the death of the deceased was result of fall from the ladder of the bus. They have pleaded that the bus in question was insured with Opposite Party No.4, Insurance Company, therefore, the liability to pay compensation, if any, rests on it. It was also pleaded that the Insurance Company was informed about the accident on 14.6.1995.

The driver of the bus, O.P.No.3 was served by Publication in Dainik Amar Ujala, but he had not put in appearance to contest the petition, hence the case proceeded ex-parte against him.

The Insurance Company, O.P. No. 4/Respondent No.4, also contested the petition by filing written statement on the ground that the facts regarding registration of the vehicle, fitness certificate

and driving licence etc. were lacking and that the vehicle was being plied in accordance with the Rules. The Insurance Company has denied its liability to pay compensation.

On the pleadings of the parties, the learned Tribunal framed the following Issues:-

1. ***Whether death of Shiv Prasad occurred As alleged in paragraph no.23 of the petition?***
2. ***Whether the claimants suffered loss worth Rs. 4,55,000-00 due to death of Shiv Prasad?***
3. ***Whether the petition is not maintainable against the opposite party no.4 as alleged in paragraph no. 25?***
4. ***Whether the claimants are entitled to any relief and amount? If so, to what amount and against whom?***

The learned Tribunal, after hearing both the parties, and going through the record, came to the conclusion that there was no evidence on record worth the name to show that at the time alleged incident, to show that the bus was being driven rashly and negligently by its driver Dhan Singh. No eye witness of the accident was produced before the Tribunal. The learned Tribunal was also of the view that the deceased was himself responsible for sitting on the roof of the bus, even if he would have been directed by the conductor to do so. Ultimately, the Tribunal found on Issue No.1 that though there were several passengers traveling in the bus, but none of them has been produced to give ocular account of the said accident to testify that the bus was being driven rashly and negligently by its driver. According to learned Tribunal, undisputedly the deceased died as a result of fall from the roof of the bus, but there was nothing on record to indicate that due to sudden and faulty application of brakes, the said accident took place. The learned Tribunal accordingly decided Issue No.1 against the claimants. On Issue No.2, the Tribunal came to the conclusion

that on the record, there is unrebutted testimony of claimant No.1 Smt. Sushila Devi, widow of the deceased to the effect that the claimants have suffered loss to the tune of Rs. 4,55,000/- due to death of Shiv Prasad. On Issue No.3, it has been held that for want of documentary evidence, it cannot be said that the driver of the bus was holding valid registration certificate, road permit etc., therefore, the learned Tribunal has absolved the Insurance Company from its liability to pay compensation. While answering Issue No. 4 the tribunal has observed that since the alleged accident was not a result of rash and negligent driving by the driver of the bus, therefore, the claimants are not entitled to any compensation under Section 166 of the Motor Vehicles Act. However, as per provisions of 'No fault Liability' under Section 140 of the Motor Vehicles Act, the learned Tribunal found the claimants entitled for the compensation amount of Rs. 50,000/- (fifty thousand) payable by Opposite Party Nos. 1, 2 and 3, and, as mentioned earlier, the learned Tribunal has passed the impugned order.

Aggrieved by the impugned judgment and Award, the appellant-claimants have preferred the present appeal.

The appellants have assailed the impugned judgment and order firstly on the ground that it was proved on record that the death of deceased Shiv Prasad was the result of rash and negligent driving of the bus driver and secondly, that the learned Tribunal has violated the provisions of the Motor Vehicles Act, 1988 holding the owner liable to pay compensation amount.

We have heard the learned counsel for both the parties and have carefully gone through the entire material on record as well as the impugned judgment and order of the learned Tribunal.

We are not inclined to accept either of the contentions raised by the appellants before us, ***firstly,*** because there is not an iota of evidence on record that the deceased Shiv Prasad was traveling in the alleged bus in the capacity of a valid passenger. ***Secondly,*** there is noting on record to indicate that the deceased had pad the amount of fare for the journey to the conductor and obtained a ticket. ***Thirdly,*** it is not disputed that the deceased died as a result of fall either from the roof of the bus of from the back-side ladder of the vehicle in question and there is no evidence worth the name to lead us to an inference that at the relevant time, the bus driver was driving the bus rashly and negligently, though, according to the claimant-appellants themselves the bus was over-crowded and full of passengers; but the claimants could not produce even a single person to give the ocular version of the alleged accident before the Tribunal. ***Fourthly,*** the learned Tribunal has rightly held that the deceased himself was responsible for riding over the roof of the bus to undertake his journey. ***Fifthly,*** the evidence of appellant Sushila Devi to the effect that the deceased Shiv Prasad died due to severe impact of sudden application of brakes by the bus driver. In her cross-examination before the learned Tribunal, she had clearly admitted that at the time of alleged accident she was her at her house and she was not an eye witness of the accident. She has also admitted that she was informed of the accident by someone; but neither she could name the said person nor has produced him for the reasons best known to her. ***Lastly,*** the Tribunal has rightly awarded compensation of Rs. 50,000/- to the claimants and has correctly fastened this ***No Fault Liability*** on the owners of the bus as provided under Section 140 of the Motor Vehicles Act. In our opinion, the impugned judgment and Award does not suffer from any illegality of infirmity. Consequently, the findings of the learned Tribunal do not call for any interference by this Court.

Accordingly, the appeal has no merit and is liable to be dismissed.

The appeal is hereby dismissed. The judgment and order under appeal is upheld. There will be no order as to costs.

(B.S. Verma, J.) (P.C. Verma, J.)

RCP